PURWADI v. MBF NORTHERN SECURITIES SDN BHD

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
PRASAD SANDOSHAM ABRAHAM JCA
ASMABI MOHAMAD JCA
[CIVIL APPEAL NO: W-02-290-2011]
19 MAY 2017

CIVIL PROCEDURE: *Appeal – Grounds of judgment – Delay in providing written grounds – Whether diminished value of finding of facts – Whether diminished appreciation of evidentiary value – Whether called for appellate intervention*

The appeal herein dealt with the question of grounds of judgment being written four years after the judgment was delivered.

Held (ordering retrial)
Per Prasad Sandosham Abraham JCA delivering the judgment of the court:

(1) The judge of the first instance remains the best sanctum in regards to finding of facts which would not be readily disturbed despite an appellate court holding different view on the facts. However, in view of the length of time for the grounds of judgment to be written, the value of the finding of facts diminishes and in the circumstances, the appellate intervention is called for. In the instant case, the delay in providing written grounds diminished the appreciation of the facts as well as the evidentiary value. In the circumstances, this appeal required appellate intervention and thus was sent back for retrial. (paras 8, 10 & 11)

Bahasa Malaysia *Headnotes*

Rayuan ini berkait dengan persoalan alasan penghakiman ditulis empat tahun selepas penghakiman diberikan.

Diputuskan (memerintahkan perbicaraan semula)
Oleh Prasad Sandosham Abraham HMR menyampaikan penghakiman mahkamah:

(1) Hakim mahkamah pemula kekal penentu terbaik berkaitan dengan dapatan fakta yang tidak boleh terus diganggu walaupun mahkamah rayuan memutuskan sebaliknya atas fakta. Walau bagaimanapun, memandangkan tempoh masa yang diambil untuk menulis penghakiman, nilai dapatan fakta berkurangan dan dalam hal keadaan tersebut, campur tangan rayuan adalah perlu. Dalam kes ini, kelewatan memberikan alasan bertulis mengurangkan nilai pertimbangan fakta dan juga nilai keterangan. Dalam keadaan tersebut, rayuan ini memerlukan campur tangan rayuan dan dengan itu, dikembalikan untuk perbicaraan semula.

A **Case(s) referred to:**

Dr Soo Fook Mun v. Foo Fio Na & Anor and Another Appeal [2001] 2 CLJ 457 CA ***(refd)***

Wong Chong Chow v. Pan-Malaysian Cement Works Bhd [1980] 1 LNS 89 FC ***(refd)***

For the appellant - Muhammad Shafee Abdullah & Ahmad Shahrizal Abdul Aziz; M/s Ranjit Ooi & Robert Low

B *For the respondent - Khoo Guan Huat, Preetha Pillai & Khong Siong Sie; M/s Skrine*

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: D-223393-1998 (set aside).]

C *Reported by S Barathi*

JUDGMENT

Prasad Sandosham Abraham JCA:

Introduction

D **[1]** We heard and disposed of this appeal on 23 February 2016, and after having perused the records of appeal and the grounds of judgment of the learned judge taking on board the submissions of counsel, we took the rather unusual step of ordering a retrial of the suit essentially on the ground that the grounds of judgment in this case were written four years after judgment was E delivered. We now elaborate further.

Material Facts

[2] The facts of the case are elucidated from the submissions of the parties and the grounds of the learned judge. Parties to this appeal will be referred F to as they were cited in the High Court.

[3] The plaintiff at the material time was a member company of the Kuala Lumpur Stock Exchange carrying on stock broking activities. The first defendant was an acquaintance of the second defendant. The plaintiff instituted proceedings against both defendants. However, proceedings against G the second defendant were discontinued and the plaintiff continued its prosecution of the claim against the first defendant solely.

[4] The learned judge allowed the plaintiff's claim in the sum of RM28,622,177.99 with interest and costs on 28 December 2010.

H **Law**

[5] Before we proceed further, we refer to some decisions that deal with the question of grounds of judgment being written several years after a decision is rendered in a civil case and how the court should be circumspect in dealing with the said grounds of judgment.

I

[6] We refer to a Federal Court decision of *Wong Chong Chow v. Pan-Malaysian Cement Works Bhd* [1980] 1 LNS 89; [1980] 2 MLJ 75 where His Lordship Chang Min Tat FCJ (as he then was) held at p. 77: A

> In so far as this conclusion of the learned judge is a finding of fact on the oral evidence set in the appearance and demeanour of the witnesses before him, this court must remember that it should not without sufficient reason differ. But it is equally clear that where the learned judge had not considered all the evidence and had not given to each bit its probative value, then his conclusion must be reviewed and the duty is on the appellate court to consider whether his conclusion can on the whole be upheld. In this case, it seems to us that any value that may properly be placed on the learned judge's appreciation of the witnesses must be greatly diminished in the considerable time that had elapsed from their appearance before him to his writing out his judgment. It also seems to us reading his judgment, he had not fully considered and given proper evidentiary value to the documentary evidence before him. B C

[7] We also refer to a Court of Appeal decision of *Dr Soo Fook Mun v. Foo Fio Na & Anor and Another Appeal* [2001] 2 CLJ 457 where His Lordship Gopal Sri Ram (as he then was) held: D

> [4] The four-year delay by the learned trial judge to deliver his judgment had the effect of diminishing the credibility of witnesses. Accordingly, this was a case where appellate intervention was more readily available than in an ordinary case where the rule of audio-visual advantage would apply to protect the findings of fact by a trial judge from appellate interference. Further, during the course of the trial, an unpleaded case of negligence was raised against Dr. Soo and the Hospital. Both suffered serious prejudice by reason thereof. E F

[8] Both appellate court decisions above are clear in holding that a delay in providing written grounds may diminish the appreciation of the facts of the case as well as the evidentiary value of this instant case.

[9] We analysed the facts of the case where we unanimously agree that Her Ladyship had misdirected herself on her findings of facts which can be summarised as below: G

(a) The alleged share trading account was opened at the request of the first defendant. The evidence during trial was that the evidence of PW1 and PW6 that the request for the opening of the alleged share trading account was at the behest of Dato' Ho Seng Chuan for Dato' Soh Chee Wen (NOP p. 303, AR Vol 2(1)). H

(b) The alleged agreement between the plaintiff and the defendant is contained and stated and/or could be inferred from the application form in ID1 which was signed on 12 August 1997. During trial, the evidence tendered was that the first defendant was not in Malaysia on 12 August 1997 as conclusively shown by his passport. However, the first defendant attended a meeting sometime in August 1997 during which the first defendant signed the application form ie, ID1. I

A (c) The shares bought and sold by the plaintiff was at the request of the first defendant. The evidence at trial was that the evidence of PW1 and PW6 that all trading instructions came from Dato' Ho Seng Chuan.

(d) Dato' Ho Seng Chuan had obtained instructions from the first defendant in respect of each and every trade which was purportedly carried out B using the illegal share trading account. However, the evidence at trial was the evidence of PW1 and PW6 that a general mandate to trade was given at the alleged meeting to Dato' Ho Seng Chuan.

(e) Each and every of the alleged share trades and/or transactions were conducted by PW3. However, PW3 admitted that not all of the alleged C trades were done by him (see NOP p. 210 AR vol 2(1)).

(f) The Raffles Place address as stated in ID1 was consonant with the particulars of the first defendant's passport made available to the plaintiff. The evidence during trial was that the Raffles Place address D does not appear anywhere in the first defendant's passport (see first defendant's passport at pp. 1279-1304 of the AR vol 2(7)).

[10] We are of the view having carefully scrutinised Her Ladyship's grounds of judgment, there appears to be misappreciation of the critical facts in this case. We are of course guided by the principles that the judge of first E instance remains the best sanctum in regards to his finding of facts which would not be readily disturbed despite an appellate court holding a different view on the facts. However in view of the length of time for the grounds of judgment to be written, the value of these finding of facts diminishes and in these circumstances appellate intervention is called for.

F **[11]** We are of the view that this appeal requires appellate intervention in a sense that we saw it fit to send the matter back for retrial. This is due to the fact that analysis of the evidence and material facts compounded by the fact that the ground of judgment was written so much later and the grounds were in substance fact-finding and the advantages of audio-visual observation G would have been diminished over the years calls for appellate intervention.

[12] We so accordingly ordered.

H

I